

**In re: GFI AMERICA, INC., d/b/a NICOLLET CATTLE
TRADING, GARY GOLDBERGER, AND NICOLLET CATTLE
COMPANY, INC.,
P. & S. Docket No. D-06-0016
Default Decision
Filed July 12, 2006**

P&S – Default.

Eric Paul for Complainant

Respondent Pro se.

Decision and Order by Administrative Law Judge Peter M. Davenport.

**DECISION AND ORDER AS TO RESPONDENT GFI
AMERICA, INC., D/B/A NICOLLET CATTLE TRADING,
UPON ADMISSION OF FACTS BY REASON OF DEFAULT**

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint and notice to show cause filed by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondents GFI America, Inc., d/b/a Nicollet Cattle Trading, and Gary Goldberger wilfully violated the Act; and giving Respondent Nicollet Cattle Company, Inc., an opportunity to show cause why its application for registration should not be denied.

Copies of the Complaint and Notice to Show Cause, and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act, were served upon Respondents. Respondents Gary Goldberger and Nicollet Cattle Company, Inc. filed an answer, and Respondent Nicollet Cattle Company, Inc., withdrew its application for registration as a dealer under the Act. Service was made on Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, by certified mail delivered to its Chapter 11 Trustee, Mr. Phillip Kunkel, on April 24, 2006. During a subsequent telephone call, Complainant's attorney reviewed the terms of the order Complainant seeks against Respondent GFI America, Inc.,

d/b/a Nicollet Cattle Trading with Mr. Kunkel; and Mr. Kunkel advised Mr. Paul that as the Chapter 11 proceeding was going to be converted into a Chapter 7 proceeding, he did not intend to file an answer on behalf of Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading. By letter dated May 5, 2006, Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, was notified that it had failed to file an answer with the Hearing Clerk within the allotted time.

Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading's failure to file an answer, are adopted and set forth herein as findings of fact.

Findings of Fact

1. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, is a Minnesota corporation whose official address and registered office is 2815 Blaisdell Avenue South, Minneapolis, MN 55408, and whose business operations are now being conducted during a Chapter 11 bankruptcy proceeding by a Trustee, Phillip L. Kunkel, whose mailing address is Phillip L. Kunkel, Esq., Gray, Plant, Mooty & Bennett, P.A., 1010 West St. Germain, Suite, Suite 600, St. Cloud, MN 56301.

2. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for its own account.

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and as a market agency buying on commission.

3. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay the full purchase price of such livestock.

Livestock Seller	Purchase Date	No. of Head	Livestock Amount	Invoice Amount after deductions and additions*	Date Payment Due per § 409(a)	Pro Rata Dealer Bond Distribution in 2006	Amount Remaining Unpaid
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Gregory A. Jensen Hamlin, IA	4/18/05	34	\$37,146.15	\$37,112.15	4/19/05	\$2,479.11	\$34,633.04 (note 1)
Whempner Bros. Wilmont, SD	4/19/05	84	\$92,278.72	\$92,194.72	4/20/05	\$6,158.65	\$86,036.07 (note 1)
Sisseton Livestock Auction, Inc. Sisseton, SD	4/21/05 4/21/05	116 320	\$148,301.52 \$373,474.06	\$148,676.46 <u>\$390,340.26</u> \$539,016.72	4/22/05 4/22/05	\$36,007.25	(note 2) (note 1) \$503,009.47
Francis Pravacek Scotland, SD	4/26/05	76	\$100,206.82	\$100,130.82	4/27/05	\$6,688.79	\$93,442.03 (note 1)
Marion Blom Corsica, SD	4/20/05	40	\$46,811.00	\$46,811.00	4/21/05	\$3,127.00	\$43,684.00 (note 1)
Wayne Raymond Zych d/b/a W-Zych Cattle Co. Beardsley, MN	4/25/05	216	\$237,904.82	\$237,688.82	4/26/05	\$15,877.73	\$221,811.09 (note 1)
Dam's Farm, Inc. Hooper, NE	4/25/05	40	\$46,185.02	\$46,145.02	4/26/05	\$3,082.51	\$43,062.51 (note 2)
Roger V. Stotts Appleton, MN	4/28/05	213	\$232,233.68	\$232,020.68	4/29/05	\$15,497.72	\$216,522.96
Michael Currence Sisseton, SD	4/24/05	59	\$72,524.76	\$72,465.76	4/25/05	\$4,840.75	\$67,625.01 (note 1)
Robert Nienow Farm, Inc. Mapleton, MN	4/17/05	115	\$140,871.75	\$140,756.75	4/18/05	\$9,410.30	\$131,346.45
Brandon O. Schweigert Edgely, ND	4/13/05	2	\$2,451.60	\$2,449.60	4/14/05	\$163.63	\$2,285.97
South Dakota Livestock Sales Watertown, SD	4/27/05	79	\$96,559.10	\$100,349.10	4/28/05	\$6,704.04	\$93,645.06

Livestock Seller	Purchase Date	No. of Head	Livestock Amount	Invoice Amount after deductions and additions*	Date Payment Due per § 409(a)	Pro Rata Dealer Bond Distribution in 2006	Amount Remaining Unpaid
Central Livestock Association, Inc. St. Paul, MN (Central Order Buyers)	4/20/05 4/26/05 4/26/05 4/27/05	14 79 30 30	\$16,307.71 \$88,850.15 \$34,838.36 \$35,116.37	\$16,307.71 \$88,850.15 \$34,838.36 <u>\$35,164.07</u> \$175,160.29	4/21/05 4/27/05 4/27/05 4/28/05	\$11,700.79	\$163,459.50
Holtzen Farms LTD	4/23/05	30	\$29,287.44	\$29,287.44	4/25/05	no bond claim filed	\$29,287.44
Jim & Abe Mach Sturgeon Lake, MN	4/24/05	35	\$36,654.36	\$36,619.36	4/25/05	\$2,446.19	\$34,173.17
Fredin Brothers, Inc. Springfield, MN	4/25/05 4/26/05	80 525	\$ 96,268.22 \$638,606.86	\$ 96,178.22 <u>\$638,071.86</u> \$734,250.08	4/26/05 4/27/05	\$49,048.29	(note 1) (note 1) \$685,201.79
Keith J. Kvistero Milan, MN	4/28/05	252	\$267,878.05	\$267,626.05	4/29/05	\$17,877.55	\$249,748.50
Equity Cooperative Livestock Sales Association Baraboo, WI	4/27/05	39	\$43,596.33	\$43,586.33	4/28/05	\$2,912.26	\$40,674.07 (note 1)
O&S Cattle Company, Inc. South St. Paul, MN	4/27/05	77	\$89,481.97	\$93,645.55	4/28/05	\$5,977.44	\$87,668.11 (note 1)
TOTALS:			\$3,003,834.82	\$3,027,316.24		\$200,000.00	\$2,827,316.24

* Deductions were made for beef promotion check off, and for the sending of payment checks by Federal Express. Additions were made for buying commission and trucking obligations paid by seller on behalf of buyer and added to invoices.

Note 1 This livestock seller has also filed statutory trust and bond claims against National Beef Packing Co., claiming that Nicollet Cattle Trading was buying livestock in this transaction as an agent for National Beef Packing Co., a disclosed principal.

Note 2 This livestock seller has also filed statutory trust and bond claims against Creekstone Farms Premium

Beef, LLC, claiming that Nicollet Cattle Trading was buying livestock in this transaction as an agent for Creekstone Farms Premium Beef, LLC., a disclosed principal.

4. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, had agreed with the livestock sellers that payment for the above livestock purchases was to come from Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, although the livestock was almost always shipped directly to packers whose identity had been fully disclosed to the livestock sellers. In two thirds of these transactions, the packers were billed by Nicollet Cattle invoice for the same livestock purchase amounts plus an itemized buying commission (generally twenty-five cents per hundredweight), and in some instances an additional itemized “clearing expense.”

5. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, in purported payment for the livestock purchases set forth in paragraph II above, issued checks which were returned unpaid because there were insufficient funds on deposit and available in the account upon which they were drawn when the checks were presented for payment. The information regarding the checks appears below:

Livestock Seller Payee	Check Date	Check No.	Check Amount	Date Returned	Reason Shown for Return
Greg Jensen	4/19/05	402485	\$37,112.15	5/04/05	Insufficient funds
Whempner Bros	4/20/05	402504	\$92,194.72	5/03/05	Insufficient funds
Sisseton Livestock Auction, Inc.	4/22/05	402531	\$148,676.46	5/03/05	Insufficient funds
Sisseton Livestock Auction, Inc.	4/22/05	402532	\$390,340.26	5/03/05	Insufficient funds
Marion Blom	4/22/05	402535	\$46,811.00	5/03/05	Insufficient funds
Brandon Schweigert	4/22/05	402539	\$2,449.60	5/11/05	Refer to maker
Mike Currence	4/25/05	402544	\$72,465.76	5/03/05	Insufficient funds

Jim & Abe Mach	4/25/05	402547	\$36,619.36	5/03/05	Insufficient funds
W-Zych Cattle Co.	4/25/05	402548	\$237,688.82	5/03/05	Insufficient funds & refer to maker
Fredin Bros	4/25/05	402549	\$96,178.22	5/03/05	Insufficient funds
Fredin Bros	4/27/05	402572	\$638,071.86	5/03/05	Insufficient funds
Robert Nienow Farm, Inc.	4/27/05	402574	\$140,756.75	5/05/05	Insufficient funds & refer to maker
Central Livestock Association, Inc.*	4/27/05	402575	\$88,850.15	5/05/05	Insufficient funds & refer to maker
Livestock Seller Payee	Check Date	Check No.	Check Amount	Date Returned	Reason Shown for Return
Central Livestock Association, Inc.*	4/27/05	402576	\$34,838.36	5/05/05	Insufficient funds & refer to maker
Central Livestock Association, Inc.*	4/27/05	402586	\$35,164.07	5/05/05	Insufficient funds & refer to maker
Central Livestock Association, Inc.*	4/29/05	402596	\$16,307.71	5/05/05	Insufficient funds & refer to maker
Holtzen Farms LTD	4/27/05	402578	\$29,287.44	5/06/05	Insufficient funds
Dams Farms, Inc.	4/27/05	402580	\$46,145.02	5/04/05	Insufficient funds
Francis Pravacek	4/27/05	402581	\$100,130.82	5/02/05	Insufficient funds

Equity Cooperative Livestock Sales	4/28/05	402587	\$43,586.33	5/03/05	Insufficient funds
O&S Cattle Co.	4/28/05	402588	\$93,645.55	5/03/05	Insufficient funds & refer to maker
South Dakota Livestock Sales	4/28/05	402589	\$100,349.10	5/03/05	Insufficient funds
Roger Stotts	4/28/05	402591	\$232,020.68	5/05/05	Insufficient funds & refer to maker
Keith Kvistero	4/28/05	402592	\$267,626.05	5/05/05	Insufficient funds & refer to maker
TOTAL:			\$3,027,316.24		

* named Central Order Buyers on check

6. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, knew, at the time the livestock was purchased and the above payment checks were issued, that Respondent had consistently been in default with respect to its secured loan agreement with Wachovia Capital Finance Corporation (Wachovia). Wachovia had given Respondent written notice on April 20, 2005, that Wachovia's forbearance with Respondent's defaults was at an end. Wachovia gave Respondent this notice due to Respondent's admission to Wachovia that approximately \$1,390,151.33 of the Accounts Respondent had reported to secure new advances on the Wachovia loan agreement were in fact the same Accounts previously reported to secure prior loan agreement advances.

7. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, knew, or should have known, that Respondent's defaults provided Wachovia with good reason to apply all livestock payments received by Respondent from packers, and deposited to the lockbox account required by Wachovia, to reduce Respondent's secured debt, instead of transferring such funds to the checking account on which Respondent drew checks to pay livestock sellers from whom Respondent had obtained the livestock.

Conclusions

By reason of the facts found in Findings of Fact 3 through 7 above, Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, has wilfully violated section 312 (a) of the

Act (7 U.S.C. §§ 213(a)).

Order

Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

- 1 Failing to pay the full purchase price of livestock; and
2. Issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, is suspended as a registrant for the period of five years.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the Respondent, unless it is appealed to the Judicial Officer by a party to

the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.